

incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned facilities; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

#### **41.103 Statutory and delegated authority.**

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by 40 U.S.C. 501 to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by 40 U.S.C. 501 to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DOD) is authorized by 10 U.S.C. 2304, and 40 U.S.C. 474(d)(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 7251, *et seq.*) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DOD and DOE, and

for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at the address specified in 41.301(a). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

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### **Subpart 41.2—Acquiring Utility Services**

#### **41.201 Policy.**

(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions at or below the simplified acquisition threshold, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)